84-1114

No. _____

Office-Supreme Court, U.S.
FILED
JAN 10 1985
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

WALTER LLOYD BLAIR
A Member of the Bar.....Petitioner

v.

COMMITTEE ON LEGAL ETHICS
Of the West Virginia State Bar..Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
WEST VIRGINIA SUPREME COURT

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QUESTIONS PRESENTED

I. Whether the West Virginia Bar lacks jurisdiction over a Maryland complaint where the West Virginia lawyer appeared pro hac vice by order of the Court and where Maryland Bar subsequently rejected the Maryland complaint

II. Whether an attoney in Disciplinary proceedings may rely on his 5th Amendment Rights pursuant to Spevack v. Klein, 385 U.S. 511 (1976)

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

WALTER LLOYD BLAIR
A Member of the Bar.....Petitioner

v.

COMMITTEE ON LEGAL ETHICS
Of the West Virginia State Bar..Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
WEST VIRGINIA SUPREME COURT

Walter Lloyd Blair, a member of the West Virginia Bar, Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Appeals for the State of West Virginia entered in the above entitled case on October 17, 1984; petition for

rehearing en banc denied on November 13, 1984, with leave to file Writ of Certiorari on or by January 15, 1985.

OPINIONS BELOW

The opinion of the Supreme Court of Appeals for the State of West Virginia is printed in the Appendix hereto at (A-1 thru A-24)[1]. The order of the court below in suspending Petitioner's license for six (6) months with subsequent restrictive conditions and the Order granting Petitioner leave to file Writ of Certiorari are located in the Appendix hereto, (A-1) and (A-25 thru A-26), respectively.

JURISDICTION

On November 15, 1984, the court below stayed the suspension of Petitioner'slicenseand granted Petitioner

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[1] "A-__" references are to the pages of the separately bound Appendix which accompanies this petition.

sixty (60) days, until January 15, 1984, to file his Petition for Writ of Certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

This case involves the United States Constitution, Amendment V (A-38); Amendment VI (A-39); Amendment VIII (A-39); and Amendment XIV (A-39). This case also involves Title 15 U.S.C. §2. Monopolizing Trade (A-34); 18 U.S.C. §241. Conspiracy against rights of citizens (A-34); 28 U.S.C. §1738. State and territorial statutes and judicial proceedings; full faith and credit (A-35)); 42 U.S.C. §1981 (A-40); 42 U.S.C. §1983 (A-40); and 42 U.S.C. §1985 (A-41). The State Constitutional provisions involved are: Constitution of West Virginia, Art. 3 §4 (A-36), Art. 3 §5 (A-37), Art.

3 §10 (A-37); and the West Virginia Bar By-Laws, Art. VI §16 (A-38); The Constitution of Maryland, Art. 17 (A-37); and Maryland Code Annotated, Discipline and Inactive Status of Attorneys, Rule BV1 (A-35). All of the above relevant provisions are set forth in the Appendix as indicated in this petition.

STATEMENT OF THE CASE

The facts necessary to properly understand the issues raised in this petition, briefly stated are:

A. Course of the Proceedings Below:

On October 17, 1984, the Supreme Court of Appeals for the State of West Virginia, after considering the verified complaint by the Legal Ethics Committee of the State of West Virginia praying for the suspension of the license to practice law of Walter Lloyd Blair for a period of one (1) year, pursuant to Article VI of the Bar By-Laws, Rules and Regulations of the West Virginia State Bar, ordered the suspension of the license for a period of six (6) months effective at the close of business on November 16, 1984. (A-1). In addition to the six (6) month suspension, however, the court imposed three (3) conditions on Petitioner upon

reinstatement, which are as follows: (A) Mr. Blair must first obtain an attorney willing to supervise him for three (3) years; (B) the attorney must be a West Virginia attorney approved by the West Virginia Bar; and (C) Mr. Blair may not appear pro hac vice or earn money as a lawyer outside the state of West Virginia for a period of three (3) years.

B. Relevant Facts Necessary to Determine the Issue Presented.

On November 15, 1984, pursuant to a Motion for Stay to file a Writ of Certiorari, the court below granted Petitioner a period of sixty (60) days in which to file a Writ of Certiorari, that is, on or by January 15, 1985.

This matter stemmed from an alleged unethical telephone call made in 1981, the subject of the suspension of license by the court below, while the Petitioner

was appearing pro hac vice with local Maryland counsel, by court order, in the state of Maryland. Maryland has jurisdiction pursuant to Maryland Code Annotated - Attorney Discipline...Rule BV1 (A-38). The Maryland State Bar dismissed the matter against Petitioner following an investigation (A-32) in 1981. However, the West Virginia Bar Counsel (while refusing all substantial motions for discovery by Mr. Blair) continued with the same complaint which has now resulted in a suspension of Petitioner's license to practice law.

On December 20, 1984, Petitioner filed his Motion and Memorandum in support of his second motion for reconsideration and dismissal of the suspension for the following reasons: (A) on November 28 and 29, 1984, the federal jury trial of Blair v.

Prosecutor Hamstead, et al., (N.D.W.Va. 82-0028-M), regarding conspiracy and 42 U.S.C. §§1981 thru 1985, revealed exonerating evidence with respect to the suspension against Petitioner and (B) on December 3, 1984, Petitioner met with District of Columbia Bar Counsel, Wallace Shipp, in his office, which meeting revealed documents which reflected: (i) exonerating material against Petitioner's suspension; (ii) substantial abuse of prosecution by West Virginia Bar Counsel, Mr. Davis, false swearing of Deponents taken in D.C. without consent or proper notice to Mr. Blair, and that West Virginia Bar's complaint was indeed false, in initio; and (iii) that indeed, West Virginia Bar Counsel and Prosecutor Hamstead, et al., did engage in conspiracy to disbar and suspend Petitioner stemming from a complaint made by Petitioner against

West Virginia Bar Counsel in 1981 pursuant to the Chambers' case, the subject of this suspension. Mr. Blair did not testify at the Bar hearing three (3) years later, i.e., February 17 and 18, 1984, relying on Spevack v. Klein, 385 U.S. 511 (1967), however, he was severely penalized for his silence by the West Virginia Bar and court below.

This second motion for reconsideration submitted to the court below, filed on December 20, 1984, was not ruled on at the filing of this Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

ARGUMENT

ISSUE 1

WHETHER THE WEST VIRGINIA BAR LACKS JURISDICTION OVER A MARYLAND COMPLAINT WHERE THE WEST VIRGINIA LAWYER APPEARED PRO HAC VICE BY ORDER OF COURT AND WHERE MARYLAND BAR SUBSEQUENTLY REJECTED THE MARYLAND COMPLAINT

The following facts are undisputed:

(1) That Petitioner, appearing pro hac vice with local counsel, Mr. McGarvey, a Montgomery County Maryland attorney, represented the Complainant, Mary Chambers, in the state of Maryland;

(2) That Petitioner, Walter Lloyd Blair, is a licensed attorney in the state of West Virginia but maintains his residence in the state of Maryland;

(3) That the state of Maryland reviewed this matter and took no adverse action against Mr. Blair; and

(4) The various branches of Maryland's State Judiciary who reviewed

this case, dismissed the complaint, in essence, as being frivolous.

In fact, the Maryland Bar Counsel, after completing the "investigation" specifically wrote a letter to West Virginia Bar Counsel on November 4, 1981, which read in Mr. Blair's favor as follows:

> I am enclosing copies of Motions filed by Mr. Blair for special admissions under Rule 20 of the cases of which I am aware. These Motions appear to be in order. (A-32).

When the court below made this ruling, it did not have a copy of this letter. This letter was submitted to the Court on Motion for Reconsideration. Respondent, Bar Counsel, had a duty to disclose this matter to the court below which would have proved res judicata and lack of West Virginia Bar's jurisdiction. Notwithstanding, West Virginia Bar Counsel pursued this Maryland case

in the state of West Virginia and brought all the witnesses to the state of West Virginia to procure a suspension of Petitioner's license. The court below has affirmed a six (6) months suspension with three (3) serious conditions attached thereto.

Petitioner contends that the state of West Virginia does not have subject matter jurisdiction over this Maryland greivance matter. **State v. Kavanaugh**, 243 A 2d 225 (N.J. 1968). Pro hac vice in the procedure used by a sister state to permit an out-of-state attorney to appear in its court in connection with a particular case or cases. However, once admitted, the attorney is subject to the local professional rules and ethical rules with respect to "discipline" just as any other attorney in the forum state. Kavanaugh, supra. Maryland Code Ann. Disciplinary Inactive Status

of Attorney, Rule BV1 reflects as follows:

> For purposes of discipline or inactive status, the term [attorneys] also includes a member of the bar of any other state, district, or territory of the United States who is employed as counsel in any case pending before any judicial tribunal or Orphans' court sitting in the state.... (Emphasis added).

The West Virginia State Bar has assumed jurisdiction of Maryland on an erroneous letter from the Assistant Bar Counsel of Maryland (A-13). This violates 18 U.S.C. §1738, state and territorial statutes and judicial proceedings; full faith and credit. Petitioner contends that jurisdiction to discipline exists with the foreign state. Only after an adverse ruling may the licensing state act further. 18 U.S.C. §1738. Matter of Shapiro, 455 N.Y.S.2d 604 (1982); this being the

state of Maryland by Statute, under these particular circumstances. State v. Kavanaugh, supra, appears to be the lead case on the subject. There, the Supreme Court of New Jersey, before whom the renoun F. Lee Bailey, Esquire, had problems, "revoked the permission heretofore given to Mr. Bailey to appear [pro hac vice] as counsel in the Kavanaugh case" by holding at 231 that:

> The courts of every jurisdiction must have control of practice before them as an 'incident to their broader responsibility for keeping the administration of justice and the standards of professional conduct unsullied.'

Petitioner contends that even if this matter was one of conflicts of law under **Erie Railroad Co. v. Tompkins**, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487 (1938), the Court would have held in Petitioner's favor that the matter should be resolved in the

"forum"; the states where all the parties, witnessses and transactions were allegedly found. Indeed, Petitioner can find no case where the licensing state has restricted the attorney from appearing in another state. See Kennan v. North Carolina Board of Law Examiners, 317 F. Supp. 13150 (E.D.N.C. 1970), as burden on applicant's right to interstate travel, and Spivak v. Sachs 16 N.Y. 2d 163 (1965). Here, the court below has ruled that Petitioner may not "enter any foreign court pro hac vice"or "accept any fee from an out-of-state client." (A-23) This position urged by the Respondent, West Virginia Bar, violates Federal Antitrust laws as an unreasonable restraint on trade 15 U.S.C. §2 (A-37) and since Petitioner resides in the state of Maryland, this "suspension and restrictions" are calculated to terminate Petitioner's law practice in

West Virginia without due process of law. Constitution of West Virginia, Art. 3 §5, "cruel and unusual" and Art. 3 §10. (A-10).[1] Petitioner's argument is also supported under "comity".

In fact, the state could not arbitrarily deny pro hac vice appearance where there is no adequate legal counsel due to racial bias or prejudice. **Sanders v. Russell**, 401 F.2d 241 (5th Cir.). Likewise, the Federal District Court does not have discretion to deny admission pro hac vice where the attorney appeared in good standing in the state in which he has a license. **In**

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[1] 15 U.S.C.A. §2 note 32 at 402 reflects: Definition of Monopoly "Monopoly power", within proscription of sections 1-7 of this title, is the power to control prices or exclude competition. U.S. v. E.I. Du Pont De Nemours & Co., Del.1956, 76 S.Ct. 904, 351 U.S. 377, 100 L.Ed. 1264. See also, TV Signal Co. of Aberdeen v. American Tel. & Tel. Co., C.A.S.D.1972, 462 F.2d 1256 . . .

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re Evans, II, 524 F.2d 1004 (5th Cir. 1975). It would appear that the action by Respondent is a violation of the 14th Amendment, equal protection requirements, and also a burden on Petitioners right to interstate travel. **Kennan v. North Carolina Board of Law Examiners**, 317 F.Supp. 1350 (E.D.N.C. 1970). Even West Virginia Bar Counsel rejected the Bar's position on October 26, 1984, where he writes "...we do not have rules or experience concerning it..." (A-97). Hence, the ruling against Petitioner is unconstitutional as an "expost facto law. (A-36).

Accordingly, the suspension and restrictions issued by the court below should be reversed and dismissed.

(A) Rights To Procedural Due Process

Respondent is entitled to procedural due process as the disciplinary proceeding is quasi-

criminal in nature. **In re Ruffalo**, 390 U.S. 544 (1968). However, the West Virginia Bar does not have the ability to provide the "accused with the right to call witnesses of his own and to confront witnesses called to testify against him." West Virginia Bar By-Laws Art. VI §16 (A-38). This violates Petitioner's 5th and 6th Amendment rights (A-42). This is because all of the witnesses reside in the state of Maryland over whom the court below has no control or authority. **Jenkins v. McKeithen**, 395 U.S. 411 (1969). Under **Ruffalo, supra**, Petitioner's right to summons witnesses was therefore eliminated by Respondent. (A-65 thru A-69).

(B) Lack Of Speedy Trial And Laches

On March 24, 1981, Mrs. Chambers, the mother of Petitioner's client, Kim

Chambers, filed her fee dispute claim before the Maryland Attorney Grievance Committee against Attorney Blair seeking reimbursement of legal fee since Mr. Blair had filed for and was granted, along with local counsel, leave to withdraw as Ms. Chambers' counsel. (A-30). In her Complaint, Mrs. Chambers also alleged that Mr. Blair made improper suggestions to her regarding the State v. Chung case. (A-9). On April 29, 1981, pursuant to Mr. Blair's detailed response to the Maryland Bar denying the Chambers' allegation and request for fees, Maryland Bar rejected the Chambers' Complaint. On June 22, 1981, West Virginia Bar Counsel inquired of Mr. Blair regarding the Chambers' Complaint, which again was denied by Petitioner on July 27, 1981. At that time, Petitioner advised that his pro hac vice appearances were all in order.

On November 18, 1981, Petitioner requested a Legal Ethics hearing in his office in Charles Town, West Virginia. Pursuant to continuous harassment, Petitioner filed a four (4) page complaint against West Virginia Bar Counsel Mr. Davis on December 23, 1981, reflecting incompetency and failure to dismiss the Chambers complaint.[2]

Notwithstanding, Petitioner did not receive a formal Complaint from the State Bar until December 13, 1983. By Motion and again by his brief, Petitioner moved to dismiss the Bar Complaint by way of lack of speedy trial and laches contending that such an ordinate delay prejudiced his defense. The State Bar and the court below have

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[2] See exonerating letter of November 4, 1981, but hidden by W.Va. Bar Counsel even though Petitioner made numerous discovery requests.

rejected dismissal on this ground (A-15) even though Petitioner claimed loss of evidence; faded memory; loss of witnesses; inability to pierce the juvenile case which is sealed in the state of Maryland; and his own inability to recall facts accurately stemming from February, 1981.

Petitioner vigorously asserts that there has been a blatent violation of his 14th Amendment Rights and a denial of the due process clause of the 5th Amendment to the United States Constitution applicable to the states through the 14th Amendment. See West Virginia Constitution Art. 3 §10. See also, **Moore v. Starcher**, 280 S.E. 2d 693 (1981). And see **Hoseman v. Wheeling Savings and Loan Ass'n.**, 57 S.E. 2d 725 (1950). In a leading West Virginia case, **State v. Knight**, 285 S.E.2d 401 (1981) at 407, the court found that such

delay may be abusive and "cast a shadow over the integrity of the [prosecutor's] office". In **Barker v. Wingo**, 407 U.S. 514 (1972), the Court found the defendant's VI Amendment Right to speedy trial was violated by such an inordinate delay in a criminal case. The Court has upheld other important constitutional guarantees of an attorney in disciplinary proceeding as in **Spevack v. Klein, supra**, and **In re Ruffalo, supra**. The standard test which should be applied in this case is as follows:

1. Length of the delay, Petitioner presents a prima facie case here after three (3) years of inordinate delay;

2. Assertion of the right to prompt hearing, Petitioner asserted his right on November 18, 1981; and,

3. Prejudice resulting from delay, Petitioner has demonstrated severe

prejudice, see Petitioner's brief to the court below and motions (4); reason for delay.

In Attorney Grievance Commission of Maryland v. Charles P. Howard, 282 Md. 515 (1978), the Court in finding for Attorney Howard pointed out that this inordinate delay will amount to:

> Locking the barn door after the horse is stolen and would not serve the underlying purpose of disciplinary proceeding, Id at 1196.

The Barker test has been upheld in other recent cases. See U.S. v. Ranson, 141 U.S. App. D.C. 87, 465 F.2d 672 (1972); Strunk v. United States, 412 U.S. 484, 92 S.Ct. 260 (1972); Bartch v. Bartch, 132 S.E. 2d 416, 204 Va. 462 (1963); and United States v. Townley, 665 F.2d 579 (1982).

Accordingly, Petitioner prays that the writ be granted.

ISSUE 2

WHETHER AN ATTORNEY IN DISCIPLINARY PROCEEDINGS MAY RELY ON HIS 5TH AMENDMENT RIGHTS PURSUANT TO SPEVACK V. KLEIN, 385 U.S. 511 (1976).

At the West Virginia Bar hearing held on February 17 and 18, 1984, Petitioner, relying on his 5th Amendment Right against self-incrimination pursuant to **Spevack v. Klein,** supra, did not testify. The West Virginia Bar penalized Petitioner for his silence by finding that Respondent did not take the stand, hence, he must be guilty of the ethical charge. Petitioner, in his brief, cited **Spevack v. Klein** which mandated reversal. The court below offered to distinguish Klein in stating that "Mr. Blair never took the witness stand in his own defense and did not assert his 5th Amendment priviledge not to incriminate himself". (A-17). Petitioner can find no such qualifica-

tion to **Klein, supra**. In **Spevack v. Klein,** id. at 514, the Court held that:

> We said in Malloy v. Hogan "the Fourteenth Amendment secures against state invasion the same priviledge that the Fifth Amendment guarantees against federal infringement - the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty...for his silence" 378 U.S., at 8."

Petitioner contends that the law is clearly in his favor and the court below erred in not dismissing the ethical complaint against him. To the extent that the analysis should go further, this Court should know the following actual circumstances which silenced Petitioner in relying on his Fifth Amendment right.

(A) Background

In April, 1980, Petitioner, a black attorney, obtained his license to

practice law in the state of West Virginia. On December 23, 1981, pursuant to West Virginia Bar Counsel Davis' six (6) month harassment, Petitioner filed a complaint against him to the West Virginia Bar. On October 8, 1982, two (2) West Virginia State Troopers appeared in Petitioner's office to read him his Miranda Warnings regarding alleged charges of intimidating two white men who were state witnessses in the trial of **State v. Porter**. Porter, an indigent defendant, was Mr. Blair's client by court appointment. Mr. Blair immediately prepared to file a civil law suit. The State Troopers were so advised.[3]

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[3] Mr. Blair realized that Bar Counsel was working along with the Prosecutor of Jefferson County. This Prosecutor had made numerous racial remarks against Mr. Blair and had advised his clients not to use Mr. Blair; he and his staff were the Defendants in (FN con't)

Based on newly discovered evidence, on October 12, 1982, or before, Prosecutor Hamstead and West Virginia Bar Counsel Davis met concerning filing ethical charges against Mr. Blair and to plan two (2) indictments against Mr. Blair. On October 12, 1982, Mr. Blair filed a five million dollar law suit against Prosecutor Hamstead, (Amended to include his assistant and law partner, Ms. Gaidrich) and Rocky Rell (a known villian) and Robert Carter (a felon). On October 14, 1982, Mr. Blair was indicted on two (2) counts of intimidating Rocky Rell and Robert Carter, state witnesses. **These indictments were procured by the help of Rell's attorney, William Martin, who vouched for Rell's character before the Grand Jury in order to obtain**

(FN con't) the law suit which was subsequently filed. [N.D.W.Va. Civ. No. 82-0028-M]

indictments. Mr. Blair was not afforded a hearing on probable cause before a Magistrate as is customary. On March 29, 1983, the conspriacy between Prosecutor Hamstead and Bar Counsel Davis was thrown off center when Circuit Judge Pierre E. Dostert, who was expected to try the case of **State v. Blair**, was recused due to prejudicial and racially biased remarks where he characterized Mr. Blair and all black attorneys as being apes and monkeys when he said, "They [black attorneys] are pulled out of trees"..."they put suits on their backs"..."and call themselves attorneys".[4] See testimony of attorney James Rich at the Judges recusal hearing. On August 17, 1983, Mr. Blair was convicted on both counts. Bar

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[4] Mr. Blair subsequently filed a one million dollar law suit against Judge Dostert.

Counsel Davis immediately moved to disbar Mr. Blair. On October 4, 1983, Mr. Blair successfully argued a motion for new trial on the basis of abusive prosecution. The motion was granted and Prosecutor Hamstead and his staff were removed from any further activities on this case for improper behavior, inter alia, which predated the indictments of Mr. Blair. West Virginia Bar terminated its petition to disbar Mr. Blair. Subsequent thereto, a new trial was set for Mr. Blair, Petitioner. On December 13, 1983, West Virginia Bar Counsel Davis sent Mr. Blair a notice and the Bar's official complaint against him by resurrecting the Chambers' complaint. On March 27, 1984, Mr. Blair was retried by a jury and acquitted of the two (2) intimidation

charges.[5]

Under such circumstances, Mr. Blair had no choice at the Bar hearing on February 17 and 18, 1984, but to rely on his 5th Amendment Right to the illegal and false criminal charges which were procured by consipiracy to disbar him. If that is not enough, on February 15, 1984, one (1) business day before the Bar hearing, Bar Counsel Davis served Mr. Blair with an amended complaint by the Bar changing dates, times, places and events for the purpose of destroying Mr. Blair's defense and prohibiting him

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[5] On November 19, 1984, Mr. Blair's law suit against Judge Dostert for defamation of character and racisim was settled out of court avoiding federal jury trial. The jurisdictional basis was diversity of citizenship, 42 U.S.C. §§1981, 1983, and 1985. On November 28, 1984, Mr. Blair amended five million dollar law suit against Prosecutor Hamstead, Ms. Gaidrich, Rocky Rell and Robert Carter was tried in Federal Court before a jury. (A-43) At the end of Mr. Blair's case in chief, the trial judge dismissed 42 U.S.C. §§1981 and 1985, conspiracy, dismissed Rocky Rell and Robert Carter, the two who falsely accused Mr. Blair of intimidatingthem in State v.Porter(FN cont)

from preparing to defend and subpoenaing additional witnesses from the state of Maryland. Due process mandates that the hearing be limited to charges made in the complaint. In re Ruffalo, 390 U.S. 544 (1968). In fact, the West Virginia Bar L.E.C. had to "assume"(A-13) erroneously and "infer" (A-21) erroneously as to Maryland law to conclude with suspension against Petitioner (see letter from Maryland Bar exonerating Petitioner A-32).[6]

([5] cont) and dismissed diversity of citizenship (notwithstanding the existance of diversity of citizenship) thereby dismissing all pendent claims for malicious prosecution, inter alia, and allowing the matter to go forward to the jury on 42 U.S.C. §1983 while reiterating "the prosecutor is absolutely immune from liability" Embler v. Pachtman, 42 U.S. 409 (1976), notwithstanding Elliott v. Perez, 561 F.Supp. 1325 (1983), inter alia, submitted by Mr. Blair on Qualified immunity. The jury found for defendants in this matter. Mr. Blair filed his appeal on December 5, 1984, to be heard in the United States 4th Cir. in Richmond, Virginia.

[6] At the Bar hearing on February 17, 1984, Mr. Blair for the first time was given a copy of Bar witness, Debroah Jarrell's, (FN cont)

Under such circumstances, Mr. Blair invoked his 5th Amendment right at the Bar hearing. He remained silent, but put on his defense by way of the witnesses he could present from the state of Maryland in West Virginia. Under such circumstances, Mr. Blair had the right to rely on prevailing Federal

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deposition
(FN cont)/taken in the District of Columbia without Petitioner's consent and without adequate notice. Mr. Blair did not attend this deposition due to insufficient notice. See In re Ruffalo, supra and Spevack v. Klein, supra. See also 6th and 14th amendment. (A-39). This deposition was ultimately used to corroborate Mrs. Chambers' alleged telephone call with Petitioner whereby Ms. Jarrell allegedly overheard Complainant Chambers say, "Blair, I'll be there, I won't be sick on Monday". The court below found this as sufficient evidence notwithstanding violations of hearsay rule and notwithstanding exonerating statements by Charlie King (A-59) another Bar witness who precluded the possibility that Ms. Jarrell was present at any telephone conversation whereby she could have heard any such incriminating statement. See Second Motion and Memorandum for Reconsideration to Dismiss submitted by Petitioner to the court below for a more detailed account. (A-46).

Constitution and Law. **Spevack v. Klien**, 385 U.S. 511 (1967).[7] The next questions are axiomatic; whether Mr. Blair has a right to "redress" and in which state or court? On or about December 20, 1984, the clerk of the court below received a detailed Second Motion for Reconsideration to Dismiss this ethics matter against Mr. Blair pursuant to newly discovered evidence from D.C. Bar Counsel's office, inter alia. At the time this document was filed, the court below had not yet ruled on said motion. The time to file this

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[7] On December 3, 1984, Mr. Blair met with D.C. Bar Counsel and found out by obtaining copies of his file and through conversation that West Virginia Bar Counsel Davis misrepresented the facts of the Bar's Complaint-knowingly mislead Mr. Blair; and, by refusing to admit discovery, kept Mr. Blair in the dark up until the Bar hearing on February 17, 1984; and procured witnesses to testify falsely in the District of Columbia for the purpose of disbarring or suspending Mr. Blair's license to practice law.

Writ of Certiorari is January 15, 1985.

(B) McGraw v. W.Va. Judicial Review Board, 264 S.E.2d 168 (1980) Failure To Provide Discovery

Petitioner submitted at least two (2) Motions for Discovery and three (3) Motions to Compel Discovery pursuant to subpoena duces tecum, yet Respondent, West Virginia Bar Counsel, failed to provide such material. For these reasons, Petitioner's rights to due process were violated which substantially prejudiced him (A-65 thru A-75). Hence, the suspension must be reversed.

The accused attorney is entitled to procedural due process. In re Ruffalo, supra. The lead case in West Virginia is McGraw v. West Virginia Judicial Review Board, 264 S.E. 2d 168 (1980) where the Honorable Justice Neeley, id at 169, writing for the majority in

reversing in favor of Petitioner, held that:

> Proceedings of Judicial Review Board are governed by Rules of Civil Procedure; consequently, Board must permit appropriate discovery of Judicial Inquiry Commission members upon proper motion by party subject to investigation by Board. R.C.P. rule 26(e).

Petitioner here is entitled to the same protection under the 5th, 6th and 14th Amendments (A-38) and indeed under West Virginia Constitution Art. 3 §§5 and 10 (A-37). Failure to provide such due process to this instant Petitioner is a denial of equal protection of the law. In re Ruffalo, 390 U.S. 544 (1968); Spevack v. Klein, 385 U.S. 511 (1967); State v. Neilsen; 136 N.W.2d 355 (Neb. 1966); Committee on Legal Ethics of West Virginia v. Pence, 240 S.E.2d 668 (1977); In re John Doe Corp. 675 F.2d 482 (1982); In re Grand Jury Proceedings 604 F.2d 798 (1979) and In re Sealed

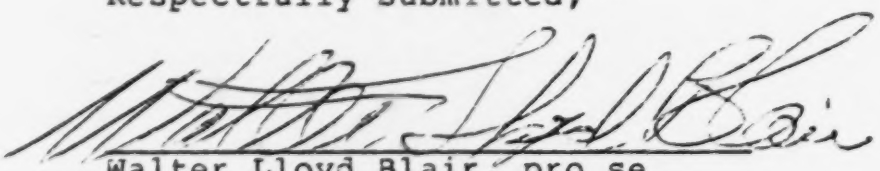
Case, 676 F.2d 793 (1982).

Petitioner contends that 42 U.S.C. §§1981, 1983, and 1985 specifically protects him against the numerous civil right violations and Constitutional Right violations committed by the West Virginia Bar and its counsel, Mr. Davis, in an attempt to disbar or suspend Petitioner's license. (A-40). Many other examples of arbitrary ruling, racisim and disparate treatment exist in the record of the court below which mandate a Writ of Certiorari pursuant to Petitioner's request. U.S. Constitution 14th Amendment. (A-39). See also Mr. Blair's Motions to Dismiss and Brief filed in the court below. See **Screw v. United States**, 1325 U.S. 91 (1945); **Taylor v. Kentucky State Bar Ass'n.**, 424 F.2d 478 (1970); **In re Ruffalo, supra**, and **Spevack v. Klein, supra**.

CONCLUSION

Accordingly, based on the record presented here by this Petition and in the Appendix, it is respectfully requested that a Writ of Certiorari be granted and issued as requested by Petitioner and that the suspension and all restrictive conditions placed on Petitioner's license to practice law by the court below be reversed and dismissed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that all parties required to be served have been served, including Robert H. Davis, Jr., Counsel

for the West Virginia Bar, E-400 State Capitol, Charleston, West Virginia, 25305, by Certified U.S. Mail with the foregoing Petition For A Writ of Certiorari, this 10th day of January, 1984.

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